

## REMARKS

### STATUS OF THE CLAIMS

Claims 1-4 are pending in the application. Amendments have been made to claims 1 and 2. These amendments are not for reasons related to patentability, but rather incorporate the Examiner's suggested amendments to further define the relationship of the various elements of the invention and thereby further prosecution of this application. Specifically, Applicant has amended claim 1 to further define the structure of the mating channel and the cover flange and thus, further distinguish the present invention from the cited references. Claim 1 has been amended solely to advance the prosecution of this case; the amendments are not necessary for meeting the requirements of patentability. Support for this amendment is to be found throughout the specification and figures. Specifically, paragraphs 14 and 15 generally describe the mating channel and the cover flange. In addition, in FIG. 2, the application directly shows each of the recited elements and the relationships thereof.

The Applicant has amended claim 2 to include a heel element. Support for this amendment is to be found in lines 3 and 4 of paragraph 19. In addition, in FIG. 3, the application directly shows the heel and the auxiliary gasket and the relationships thereof. Accordingly, no new matter has been added by this amendment and no estoppels are intended thereby.

Allowance for this matter is earnestly solicited. In addition, it is respectfully requested that this amendment and response be considered.

### REJECTIONS UNDER 35 U.S.C. § 102(b) (U.S. Patent No. 5,823,340 to Willi Maihofer)

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,823,340 to Willi Maihofer (the Maihofer document). Firstly, the Examiner is

thanked for her exemplary assistance during telephonic Examiner Interviews on June 9 and 16, 2004 in which the Examiner provided amendments to the claims that appear to overcome the currently cited references. The Applicant respectfully submits that it is believed that the amendments submitted herein to claim 1 resolves the foregoing rejection. Claim 2 depends from independent claim 1. Therefore, withdrawal of the 35 U.S.C. § 102(b) rejection to claims 1 and 2 as being anticipated by the Maihofer document is respectfully requested in light of the amendments submitted herein and the following comments.

Without conceding the propriety of the rejections, the remaining pending independent claim 1 has been amended to more particularly recite various aspects of the invention recited therein. The claim now further defines the respective structures and structural relationships of the drum flange, inner wall, outer wall, and cover flange. With regard to the drum flange, claim 1 recites, *inter alia*, the drum flange having a substantially planar upper surface. With regard to the inner wall, claim 1 recites, *inter alia*, an inner wall extending generally upward from said panel. With regard to the outer wall, claim 1 recites, *inter alia*, an outer wall having an upper portion thereof extending above the panel and a lower portion thereof extending below the panel. With regard to the cover flange, claim 1 recites, *inter alia*, a cover flange connected to the lower portion of the outer wall and extending radially and outwardly therefrom, wherein the cover flange is disposed below the panel, the cover flange having a lower surface to mate with the upper surface of said drum flange. In addition, the claim now recites a lip. In this regard, claim 1 recites, *inter alia*, an annular, upwardly protruding lip disposed between said inner wall and said outer wall, said lip being in general alignment with said side wall.

This combination of features are not taught in the art of record as claimed, including the Maihofer document. For example, the Maihofer document is directed to a container device

having gasket that resides in an annular groove let into an outer receptacle flange (See Column 4 lines 53-57 and FIG. 8 item 18). The outer receptacle flange further includes several transitions and other such structures (See Column 4 lines 60-66 and FIG. 8). As such, the upper surface of the outer receptacle flange forms a highly convoluted profile. In addition, the lid disclosed in the Maihofer document is composed of a panel disposed above a groove configured to accept the top edge of the receptacle (See Column 5 lines 23-25 and FIG. 8 items 2a and 5a). More particularly, the Maihofer document discloses an annular rib that extends downward from the lid panel (See Column 4 lines 24-27 and FIG. 8 item 12). In a related manner, the Maihofer document discloses an outer wall disposed entirely below the panel (See FIG. 8 item 22). Furthermore, the Maihofer document does not teach or suggest a lip as recited in claim 1.

In view of the foregoing, reconsideration and allowance of the application is believed in order and such action is earnestly solicited.

REJECTIONS UNDER 35 U.S.C. § 103(a) (the Maihofer document in view of U.S. Patent No. 5,573,118 to Harley L. Cramer et al.)

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being anticipated by the Maihofer document in view of U.S. Patent No. 5,573,118 to Harley L. Cramer et al. (the Cramer et al. document). The Applicant respectfully submits that as claim 3 depends from independent claim 1, it is therefore respectfully submitted that claim 3 is patentable for at least the same reasons as discussed with respect to claim 1. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection to claim 3 as being anticipated by the Maihofer document in view of the Cramer et al. document is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103(a) (the Maihofer document)

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being anticipated by the Maihofer document. The Applicant respectfully submits that as claim 4 depends from independent claim 1, it is therefore respectfully submitted that claim 4 is patentable for at least the same reasons as discussed with respect to claim 1. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection to claim 4 as being anticipated by the Maihofer document is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 103(a) (the Maihofer document in view of U.S. Patent No. 4,347,947 to Theo Hammes)

Claims 1, 2, and 4 stand rejected under 35 U.S.C. § 103(a) as being anticipated by the Maihofer document in view of U.S. Patent No. 4,347,947 to Theo Hammes (the Hammes document). The Applicant respectfully submits that it is believed that the amendments submitted herein to claim 1 resolves the foregoing rejection. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection to claims 1, 2, and 4 as being anticipated by the Maihofer in view of the Hammes document is respectfully requested in light of the amendments submitted herein and the following comments.

In order to establish a *prima facie* case of obviousness, the Examiner is kindly reminded that each of three basic criteria must be met. First, the prior art references must teach or suggest all of the elements of the claimed invention. MPEP § 2142; MPEP § 2143.03. Second, there must be a reasonable expectation of success suggested in the prior art. MPEP § 2142. Third, there must be some motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art at the time the invention was conceived, to modify and/or combine the reference teachings. *Id.*

Claims 2 and 4 depend from independent claim 1. A *prima facie* case of obviousness has not been made in that the Maihofer document fails to teach or suggest the invention as recited in claim 1 of the present application. It is further submitted that a proper motivation is not provided in the Office Action to modify or the Maihofer document or combine the Maihofer document with the Hammes document to teach or suggest the invention as recited in claim 1 of the present application.

The invention as set forth in claim 1 recites *inter alia*, an annular, upwardly protruding lip disposed between said inner wall and said outer wall, said lip being in general alignment with said side wall. In contrast, the Maihofer document fails to disclose a lip. That is, the Maihofer document fails to teach or suggest all of the claimed elements. As such, a *prima facie* case of obviousness has not been established in that the Maihofer document fails to teach or suggest the invention as recited in claim 1 of the present application. Furthermore, the Hammes document fails to correct for the shortcomings of the Maihofer document. In this regard, the Hammes document also fails to disclose a lip.

Absent the disclosure or suggestion of all of the claimed elements, the Maihofer document alone or in combination with the Hammes document fail to provide a reasonable expectation of success and further fails to provide some motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art at the time the invention was conceived, to modify and/or combine the reference teachings. Therefore, on all counts, the Office Action has failed to establish a *prima facie* case of obviousness. If an Examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. See *In re Rijckaert*, 9 F.3d 1531 (Fed. Cir. 1993). The Federal Circuit further held in the matter of *In re Oetiker*, 977 F.2d 1443, 1445-1446 (Fed. Cir. 1992):

If examination ... does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to the grant of the patent.

In view of the foregoing, withdrawal of the 35 U.S.C. § 103(a) rejection to claims 1, 2, and 4 as being anticipated by the Maihofer in view of the Hammes document is respectfully requested at least because both the Maihofer document and the Hammes document fail to disclose, at least, “an annular, upwardly protruding lip disposed between said inner wall and said outer wall, said lip being in general alignment with said side wall” as recited, *inter alia*, in claim 1. Claims 2 and 4 depend from independent claim 1 and are therefore believed to be patentable for at least the same reasons as stated herein with respect to claim 1. Thus, the Applicant respectfully requests the Examiner to reconsider and withdraw the rejections of claims 1, 2, and 4.

REJECTIONS UNDER 35 U.S.C. § 103(a) (the Maihofer document in view of the Hammes document and further in view of the Cramer et al. document)

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being anticipated by the Maihofer document in view of the Hammes document and further in view of the Cramer et al. document. The Applicant respectfully submits that as claim 3 depends from independent claim 1, it is therefore respectfully submitted that claim 3 is patentable for at least the same reasons as discussed with respect to claim 1. Therefore, withdrawal of the 35 U.S.C. § 103(a) rejection to claim 3 as being anticipated by the Maihofer document in view of the Hammes document and further in view of the Cramer et al. document is respectfully requested.

## CONCLUSION

It is respectfully submitted that the application is now in condition for allowance. If it is believed that any further issue exists, the Examiner is invited to contact the undersigned agent by telephone if it is believed that such contact will expedite the prosecution of the application.

In the event this response is not timely received or an extension is required, the Applicant petitions for an appropriate extension of time. Any additional fees may be charged to or overpayment credited to Deposit Account No. 50-2036.

Respectfully submitted,

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